

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIE F. AGEE,

Defendant-Appellant.

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UNPUBLISHED

October 14, 2003

No. 241429

Wayne Circuit Court

LC No. 01-004226

Before: Kelly, P.J. and Cavanagh and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of assault with intent to commit murder, MCL 750.83 for which he was sentenced to ten to twenty years' imprisonment.<sup>1</sup> We affirm.

I. Voir Dire

Defendant first argues that the trial court erred in performing an inadequate and cursory voir dire and in precluding defense counsel's participation. We disagree.

There is no right to have counsel conduct voir dire. *People v Sawyer*, 215 Mich App 183, 191; 545 NW2d 6 (1996). The scope of voir dire examination of prospective jurors is within the discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *People v Tyburski*, 445 Mich 606, 618-619; 518 NW2d 441 (1994). "The function of voir dire is to elicit sufficient information from prospective jurors to enable the trial court and counsel to determine who should be disqualified from service on the basis of an inability to render decisions impartially." *Sawyer, supra* at 186. The trial court has considerable latitude in both the scope and conduct of voir dire. *Id.*

The record indicates that the trial court asked in-depth voir dire questions in an effort to exclude prospective jurors who would not be capable of fairly and impartially trying the case against defendant. The court sua sponte dismissed ten jurors when they indicated for personal or

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<sup>1</sup> Defendant was tried jointly with Ernest L. Green. This case was submitted with *People v Green*, Docket No. 24571.

health reasons, or bias, that they would be unable to be impartial jurors. Because the record shows the trial court's questions were designed to discern bias, we find the trial court did not abuse its discretion.

## II. Sufficiency of the Evidence

Defendant next argues there was insufficient evidence to convict him. We disagree.

This Court must determine if the evidence, viewed in a light most favorable to the prosecution, was sufficient to show that the essential elements of the crime were proved to a rational trier of fact beyond a reasonable doubt. *People v Breck*, 230 Mich App 450, 456; 584 NW2d 602 (1998). Due process requires that a prosecutor present evidence sufficient to justify a trier of fact in concluding that the defendant is guilty beyond a reasonable doubt. *Id.* The trier of fact determines what inferences are drawn from the evidence and what weight to accord the inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

The crime of assault with intent to commit murder consists of three elements: “(1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder.” *People v Warren (After Remand)*, 200 Mich App 586, 588; 504 NW2d 907 (1993). “A conviction of aiding and abetting requires proof of the following elements: (1) the underlying crime was committed by either the defendant or some other person, (2) the defendant performed acts or gave encouragement that aided and assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time of giving aid or encouragement.” *People v Smielewski*, 235 Mich App 196, 207; 596 NW2d 636 (1999).

Here, defendant was involved in a verbal altercation with the victim when the codefendant fired two shots from a nine-millimeter handgun at the victim. After the codefendant fired the two shots at the victim who ran, defendant joined the codefendant in chasing the victim. The codefendant then fired a third shot at the victim. The jury could draw the inference that because defendant was running behind the codefendant, defendant knew the codefendant fired the third shot. Once defendant caught up with the victim and the codefendant, the codefendant yelled at defendant, “Grab him Willie, grab him.” Defendant joined the codefendant in beating the victim's face and neck until he fell to the ground. While the victim was lying on the ground, defendant and the codefendant continued kicking him despite his pleas. Defendant and the codefendant only stopped kicking the victim when they heard people approaching. The victim died from a closed head injury and a single gunshot wound. Defendant's actions of joining the codefendant chasing after the victim, after the codefendant fired two shots at the victim, combined with defendant's actions of beating and kicking the victim with the codefendant demonstrates defendant performed acts that assisted the codefendant in the murder of the victim. Viewed in a light most favorable to the prosecutor, there was sufficient evidence to convict defendant of assault with intent to commit murder.

## III. Defendant's Right to Testify

Defendant next argues, without citing any authority, that “an accused's right to testify is so inherently personal and of such fundamental importance that an on-the-record waiver should have been elicited by the trial judge.” But this issue is without merit because the trial court has

no duty to ascertain on the record whether defendant intelligently and knowingly waived his right to testify. This Court addressed this identical issue in *People v Simmons*, 140 Mich App 681, 682-684; 364 NW2d 783 (1985), and concluded, “We agree with the majority of courts which have addressed this issue and decline to require an on-the-record waiver of defendant’s right to testify.” This Court further noted if a defendant “decides not to testify or acquiesces in his attorney’s decision that he not testify, ‘the right will be deemed waived.’” *Id.* at 685, quoting *State v Albright*, 96 Wis 2d 122, 135; 291 NW2d 487 (1980).

#### IV. Jury Instructions

Defendant next argues, for the first time on appeal, the trial court committed error requiring reversal when it instructed the jury on assault with intent to commit murder because the charge was not supported by the evidence. Defendant forfeited this issue because he failed to object to the jury instructions and, on appeal, has failed to show plain error affecting his substantial rights. *People v Gonzalez*, 256 Mich App 212, 225; 663 NW2d 499 (2003), citing *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Because the trial court’s final instructions cleared up any confusion on the elements necessary for assault with intent to commit murder, there was no plain error affecting defendant’s substantial rights.

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ Mark J. Cavanagh  
/s/ Michael J. Talbot